



Date: November 4, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Mark D. Ahrendsen, Transportation Director
Harmon E. Crutchfield, Assistant Transportation Director

Subject: American Campus, LLC Parking Lease Agreement and Parking Management Agreement for the North Parking Garage

Executive Summary

The City of Durham (“City”) and American Campus, LLC (“American Campus”) have negotiated a Parking Lease Agreement and Parking Management Agreement for the North Parking Garage. On May 23, 2011, City Council approved a Memorandum of Understanding (“MOU”) between the City of Durham and American Campus, LLC to authorize negotiation of a new Parking Lease agreement, Parking Management Agreement, and modifications to the existing Development Agreement. In August 2003, the City, Capital Broadcasting Company (CBC) and American Campus entered into a public-private partnership for the redevelopment of the American Tobacco property located in downtown Durham. The City, CBC, and American Campus entered into the following agreements: the Development Agreement, a Parking Lease Agreement (with a possible 20-year term), and a Parking Management Agreement (with a possible 20-year term).

CBC and American Campus currently lease and manage the entire South Parking Garage owned by Durham County and the East Parking Garage, owned by CBC. Therefore, CBC and American Campus currently lease and/or manage the majority of all parking within the American Tobacco Complex. The City approved a MOU for the North Parking Garage with American Campus, LLC and CBC that requested the majority of parking spaces intended to serve the American Tobacco Campus be leased by owners and users of the American Tobacco Campus and that all parking activities in the area be managed by the same entity in order to improve the long term management efficiency and effectiveness of all parking functions provided within the American Tobacco Complex. The MOU established the general guidelines by which more detailed agreements(s) would be developed and ultimately approved by City Council.

Pursuant to the MOU, the City has negotiated a Parking Lease Agreement and Parking Management Agreement with American Campus, LLC. The Administration feels that the long term management and economic success of the American Tobacco Project would be enhanced through the long term leasing of the majority of parking spaces available at the North Garage for use by the owners and users of the American Tobacco Campus and

hereby recommends approval of the attached American Campus, LLC Parking Lease and Parking Management Agreements.

Recommendation

The Transportation Department recommends that the City Council: (1) Adopt the resolution that authorizes the City Manager to advertise for upset bids in accordance with G.S. 160A-269 for the lease of 1,015 spaces in the North Garage and provides that if no upset bids are received, the City Manager may accept the offer from American Campus, LLC to lease a maximum of 1,015 spaces of the North Garage for an initial term of 10 years with options to renew for 6 additional 5-year terms at a rate subject to adjustment according to the contract; (2) Authorize the City Manager to execute the North Garage Parking Lease Agreement with American Campus, LLC, if no upset bid is received, for an initial term of 10 years with options to renew for six additional five-year terms at a rate subject to adjustment according to the contract; and (3) Authorize the City Manager to execute the Parking Management Agreement with American Campus, LLC for management of the North Garage for an initial term of 10 years with options to renew for 6 additional 5-year terms pursuant to the payment terms specified in the contract.

Background

In August 2003, the City, CBC, and American Campus entered into a public-private partnership for the redevelopment of the American Tobacco property located in downtown Durham. The City, CBC, and American Campus entered into the following agreements: Development Agreement, Parking Lease Agreement (with a possible 20-year term), and Parking Management Agreement (with a possible 20-year term). Through these agreements, CBC leases 49% (573) of the parking spaces in the North Parking Garage during the periods of 7:00 am through 6:30 pm, Monday through Friday and up to 200 parking spaces from 6:30 pm through 8:00 pm, Monday through Friday, and from 9:00 am through 1:00 pm, Saturday. The City also has a parking management agreement with American Campus, LLC to manage the North Parking Garage during the hours of 7:00 am through 6:30 pm, Monday through Friday for all of the parking spaces and from 6:30 pm through 8:00 pm, Monday through Friday, and from 9:00 am through 1:00 pm, Saturday, for up to 200 Leased spaces. The City has the option of operating the North Parking Garage beyond the hours specified and consequently all special event activities are provided by the City through its management contract with Lanier Parking of Durham, LLC.

In addition, CBC and American Campus currently lease and manage 24 hours a day the entire South Parking Garage owned by Durham County and the East Parking Garage owned by CBC. Therefore, CBC and American Campus currently lease and/or manage the majority of all parking within the American Tobacco Complex. American Campus, LLC and CBC have requested that the City: (1) lease to American Campus all available parking spaces in the North Parking garage; and (2) have American Campus manage the North Parking garage over a potential 40-year term. As a result of this request from CBC and American Campus, the City entered into discussions with CBC. The goal of the discussions was to develop an MOU that provided CBC and American Campus the ability to lease and operate parking facilities at the American Campus Complex as effectively and efficiently as possible from a customer viewpoint. On May 23, 2011, the City, CBC, and American Campus executed an MOU. The MOU established the general guidelines by which more detailed agreements(s) would be developed and ultimately approved by City Council. Pursuant to the MOU, the City has negotiated a Parking Lease Agreement and Parking Management Agreement with American Campus, LLC.

Issues and Analysis

The key elements of the Parking Lease Agreement are outlined below:

1. The lease term is for 10 years with options to renew for 6 additional five-year terms (for a total potential of 40 years);
2. The Tenant's leased spaces cover all the available parking spaces within the North Garage excluding the Visitor Parking spaces (155 spaces); the TTA Parking spaces (150 spaces) and the SBER Lucky Strike/City Leased spaces (30 spaces) (unless the owner of the SBER Lucky Strike building agrees to sublease to the Tenant, in which case, the Tenant's leased spaces will also include the 30 SBER Lucky Strike/City Leased spaces). The maximum total number of spaces that may be leased to Tenant is 1,015 spaces;
3. The parking fee is set at \$55.00, but is adjusted to the lesser of the "Fair Market Rate" (i.e., rate set by the City for other parking facilities operated by the City) or a maximum parking rate schedule (which increases 3% each year);
4. The Tenant shall have exclusive rights to the spaces (24/7) with the exception of "Special Events" operating hours, which will be from 6:30 p.m. to 7:00 a.m., Monday through Thursday, and beginning at 6:30 p.m. on Friday through 7:00 a.m. on Monday. This is also the same time allotted for "Residential Leased Spaces," if the appropriate equipment is installed in the North Garage to track 24/7 usage;
5. If Residential Leased Spaces are created, the Tenant will have the right to the first 300 permits available (free of charge). Anything beyond the first 300 will be at the discretion of the City and Parking Manager to regulate and lease;
6. In order to accommodate current American Tobacco Campus (ATC) building owners that are not associated or affiliated with American Campus, LLC or CBC, the lease agreement requires that the new Tenant offer new leases to the owners of the "Old Bull/Noel" buildings and the "SBER Lucky Strike" building. This was negotiated to address the concern that certain current property owners on the north end of ATC would be disadvantaged by this new lease agreement since the North Garage was originally constructed to serve those buildings in addition to other buildings within ATC;
7. Due to the Lease Agreement being privately negotiated with American Campus, LLC, it must be subject to the upset bid process (pursuant to G.S. 160A-269) since it is a lease of public property for more than 10 years. Accordingly, the lease is written such that a successful bidder (other than American Campus, LLC) could execute the lease (if first authorized by City Council), but, if an upset bidder executed the new lease, the lease would be subject to the terms of the existing 2003 Lease Agreement with American Campus, LLC until its expiration. (the City would have to assign the 2003 lease to the new tenant). The Lease Agreement contains special language to address this issue;

8. The City Council must also adopt a “Resolution Authorizing Upset Bid Process to Lease Parking Spaces in the North Garage to American Campus, LLC.” This resolution allows the City Manager to execute the agreement with American Campus, LLC if no upset bids are received.
9. In accordance with the MOU, the resolution will require that any competitive bidder must have at least seventy percent (70%) of the licenses (or parking permits or subleases) be used by the Tenant, Tenant’s employees, or by residents or tenants of Property Owned by Tenant. For the purpose of this requirement, the term “Property Owned by Tenant” means property then owned by Tenant or a Tenant Affiliate (as defined below), or property that Tenant or a Tenant Affiliate previously owned and had transferred or had conveyed to a third party. For the purpose of this requirement, the term “Tenant Affiliate” means any parent or subsidiary of Tenant, or any subsidiary of Tenant’s parent or a Tenant subsidiary.

The key elements of the Parking Management Agreement (PMA) are outlined below:

1. The term is for 10 years with options to renew for 6 additional five-year terms (for a total potential of 40 years) (This term is identical to the Parking Lease Agreement Term. There is a cross-default provision in the PMA, where the Parking Manager will be found in default if the CBC affiliate Tenant is also found in default under its lease agreement.);
2. The Parking Manager is responsible for specified maintenance, repair and reporting;
3. The Parking Management fee is set at \$20.00 per space per month subject to an annual increase or decrease based upon the CPI, but shall not increase or decrease more than 3%. The Parking Management fee is subject to a onetime readjustment on July 1, 2025 when it will be adjusted to a rate equal to \$17.20 adjusted annually from July 1, 2012 to July 1, 2025;
4. The Manager shall be responsible for collecting all parking revenue from the garage excluding revenue from long term lease agreements between the City and others. Parking Revenue includes revenue from Special Events collection, revenue from “Residential Permits” (if equipment is installed to allow for 24/7 monitoring of garage usage), and charges for Visitor Spaces, if equipment is installed by the Manager to charge for Visitor Spaces;
5. The City is not paid for 100% of the parking revenues collected by the Parking Manager. In the case of Special Events revenue, the City is paid 35% of Gross Revenue. In the case of Residential Permits, the City is paid for those permits issued in excess of the first 300 spaces (which 1st 300 go to the Tenant). In the case of Visitor Parking, the Manager pays the City the same per space rental rate paid by the Tenant for leased spaces;
6. The Parking Manager submits a monthly reporting form, which services as a count of spaces used or permits issued for parking revenue related purposes (i.e., Special Events, Residential Permits, and charged Visitor Spaces). The monthly Reporting Form also calculates the portion of payment owed to the City, which payment is made with the submittal.

To fulfill the requirements of these agreements, the City will have to initiate an upset bid process for the long term parking lease agreement. The Administration feels that these agreements would contribute to the long term economic and management success of the entire American Tobacco Campus, which would be of great benefit to the general public and ensure the continued economic growth and development of downtown Durham.

Alternatives

- Approve the Agreements between the City of Durham and American Campus, LLC regarding Parking Lease Agreement and Parking Management Agreement.
- Continue the current agreements with Capitol Broadcasting Company and American Campus, LLC.

Financial Impact

Under the terms of the Parking Lease Agreement, the City will receive \$55.00 per space (increasing from \$45.00 per space) for 1,015 parking spaces leased by CBC. Likewise, the City will continue to pay \$20.00 per space (adjusted annually by CPI until 2025 at which time the management fee will be reset) for management of the North Parking Garage. Under the terms of the Development Agreement, the City will continue to provide an incentive fee of \$27.00 per space through November 2014. Should the parking rate established by the City for the North Garage change, the incentive fee will change by a commensurate amount. In addition, the City will receive 35% of gross revenue from special event parking. This is equivalent to current level of revenue received from special event parking managed by Lanier Parking of Durham, LLC.

SDBE Summary

The SDBE Summary is not applicable.

Attachment

Resolution Authorizing Upset Bid Process to Lease Parking Spaces in North Garage to American Campus, LLC
North Garage Parking Lease Agreement
Parking Management Agreement
Exhibit C: Parking Garage Maintenance Manual (This attachment is part of the Parking Management Agreement)